

200 KAR 26:010. KGPA operating procedures.

RELATES TO: KRS 42.420, 45.810, 56.450, 56.870(3), Chapter 148, Chapter 154, 353.750-353.776

STATUTORY AUTHORITY: KRS 353.754(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.754(5) requires the Kentucky Gas Pipeline Authority to promulgate administrative regulations for the conducting of its business and affairs. This administrative regulation establishes the operating procedures for the Kentucky Gas Pipeline Authority.

Section 1. Definitions. (1) "Full-time job" means a position filled by an employee, except for contract or part-time employees, that the company projects will work on an annual basis 1,820 hours.

(2) "KGPA" means the Kentucky Gas Pipeline Authority, created and established by KRS 353.750.

(3) "KPABAC" means the Kentucky Private Activity Bond Allocation Committee, created and established by KRS 103.286.

(4) "Project" is defined in KRS 353.750(5).

Section 2. Application Process. (1) Eligible projects may be financed by the issuance of revenue bonds by the KGPA pursuant to an agreement between the KGPA and the applicant related to the project.

(2) Before filing an application requesting the issuance of revenue bonds by the KGPA, an applicant shall contact:

(a) Bond counsel to determine if financing by the KGPA is feasible and any relevant federal tax issues associated with the issuance of any revenue bonds for the project;

(b) The KPABAC if the bond issue qualifies as a private activity bond and the applicant intends to request an allocation of a portion of the state private activity bond volume cap;

(c)1. Potential underwriters, to receive a commitment to purchase the bonds, if the issue is to be publicly sold; or

2. Other purchasers, to receive a commitment to purchase the bonds, if the issue is to be privately placed; and

(d) Governmental entities that will be impacted by expected lost property tax revenues as a result of the proposed bond issue.

(3) An applicant requesting the issuance of revenue bonds by the KGPA shall submit an application using the KGPA application. The application shall be submitted to the KGPA at least ninety (90) days prior to the anticipated date of issuance of the revenue bonds, and shall be accompanied by:

(a) A \$500 nonrefundable application fee;

(b) Resolutions or other documents of support from governmental entities impacted by expected lost property tax revenues as a result of the proposed bond issue; and

(c) A KGPA New Bond Issue Report.

Section 3. Evaluation Criteria. The following criteria may be considered by the KGPA when evaluating a project application and issuance of revenue bonds for the project:

(1) Number of new full-time jobs expected to be created or retained as a result of the project for which the bonds are to be issued;

(2) Average hourly wage expected to be paid for each full-time job created or retained;

(3) Employee benefits expected to be offered;

- (4) Amount of capital investment being made in the project by the applicant;
- (5) Unemployment rate in the county or counties of the proposed project;
- (6) State tax incentive programs and grant or loan programs in which the applicant has previously participated with another project or is seeking to participate in with the proposed project;
- (7) Whether the proposed project would be eligible to participate in a tax incentive, grant, or loan program offered under KRS Chapter 148 or 154;
- (8) New tax revenues which the applicant anticipates will be produced by the project over the life of the bond issue, i.e. severance tax revenue, corporate income tax, sales tax, occupational tax, etc.;
- (9) Approximate amount and percentage of state and local ad valorem taxes expected to be lost as a result of the applicant leasing all or a portion of the project from the KGPA;
- (10) Whether the proposed project will result in an increase in current user rates;
- (11) Whether the rate structure will be regulated by the Kentucky Public Service Commission or any other public regulatory body;
- (12) Whether the project is financially viable, as evidenced by a willing applicant and a willing lender; or
- (13) Whether the project will increase transmission of gas.

Section 4. Approval Process. (1) The KGPA shall evidence its approval or disapproval of the proposed project and related bond issue through the adoption of a resolution authorizing the project and issuance, execution, and delivery of the bonds. The resolution shall also approve any related lease agreement, loan agreement, or similar agreement, and authorize the appropriate officials of the KGPA to negotiate the terms of and execute any agreement. A copy of the resolution shall be sent to the applicant.

(2) Sale of the bonds shall not occur before receipt of the resolution.

(3) As a condition of approval of the proposed bond issuance, the KGPA shall require the execution and delivery of a lease agreement, loan agreement, or similar agreement between the applicant and the KGPA providing for or relating to the financing of the construction, reconstruction, improvement, or repair of the proposed project, if the applicant will be leasing all or a portion of the industrial project from the KGPA.

(4) Upon approval of the project by the KGPA and prior to any bonds being issued for the project:

(a) An applicant shall seek final approval by the applicable regulatory body or authority;

(b) The listed entities shall review and approve the proposed bond issue:

1. State Property and Buildings Commission (SPBC), pursuant to KRS 56.450;

2. Capitol Projects and Bond Oversight Committee, pursuant to KRS 45.810; and

3. Office of Financial Management in the Office of the Controller within the Finance and Administration Cabinet, pursuant to KRS 42.420; and

(c) The Secretary of the Finance and Administration Cabinet shall certify that the issuance of revenue bonds in relation to the project and the terms of the issue shall not require an appropriation of state general funds, in accordance with KRS 56.870(3).

(5) The applicant shall complete a KGPA Bond Information Disclosure Form and submit it to the Office of Financial Management no later than five (5) days after the bond or note sale.

Section 5. Reporting Requirements. (1) The KGPA shall make an annual report in accordance with the provisions of KRS 353.776.

(2) The KGPA shall provide for an audit in accordance with the provisions of KRS 353.776.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "KGPA Application (8/05)";
- (b) "KGPA New Bond Issue Report (8/05)"; and
- (c) "KGPA Bond Information Disclosure (8/05)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Finance and Administration Cabinet, Office of the Secretary, Room 383 Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (32 Ky.R. 706; 1082; eff. 12-16-2005.)